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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT PAPER NUMBER

1772

DATE MAILED: 09/24/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/871,480

Applicant(s)

STEINL, ALFRED

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 1-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4 – 23 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from other multiple dependent claims. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

An example of acceptable language for the claims is as follows: “A gadget as in one of claims 4 – 7, in which ...”.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 – 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The language of the claims and the specification is vague on how this strip is to be used or constructed by an individual skilled in the art. The specification fails to give an example or describe how the lamellar strip would be used.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 – 20 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “first connecting element” in claims 1, 5, 6, 7, 9 and 17 is unclear, which render the claims vague and indefinite. It is unclear from the claim language, specification and drawings what “connecting element” means, if it refers to part of the lamellar strip, one of the layers of the strip, how it is different from the “second connecting element” or if it is an article which connects the strip to some other object or surface.

The phrase “second connecting element” in claims 1, 2, 3, 4 and 17 is unclear, which render the claims vague and indefinite. It is unclear from the claim language, specification and drawings what “connecting element” means, if it refers to part of the lamellar strip, one of the layers of the strip, how it is different from the “first connecting element” or if it is an article which connects the strip to some other object or surface.

The phrase “lamella legs” in claims 1 and 10 is unclear, which render the claims vague and indefinite. It is unclear from the claim language and the specification what is meant by “lamella legs” since lamella refers to a layer of the strip, and the layers appear to have smooth, flat surfaces.

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The word “recesses” or “recess” in claims 1, 10, 11, 12, 15 and 23 is unclear, which render the claims vague and indefinite. It is unclear from the claim language and the specification what is meant by “recess”, especially when “two recesses” are present. It is unclear if there is a recess on each side of the extensions, or if the recess is an opening that is formed in the strip.

The phrase “connecting web” in claim 3 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language, specification and drawings what “connecting web” means, if it refers to part of the lamellar strip, the type of material used in the strip or if it is a porous section of the strip.

The phrase “the second connecting element is a connecting web that is inclined by an angle of W1” in claim 3 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language, specification and drawings what how the second element is inclined. Is it in a U-shape?

The phrase “has preferably the same shape in each lamella, and wherein it is particularly preferred that the second connecting elements of all lamellae have the same orientation” in claim 4 is unclear, which renders the claim vague and indefinite. Preferably and particularly preferred are not positive limitations in the claim. The connecting elements may have different orientations and shapes.

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The phrase “preferably” in claims 6, 14, 16, 19, and 23 is unclear, which render the claims vague and indefinite. Preferably is not a positive limitation in the claim. The cut-out may or may not form a gap in strip, the shape or may not be symmetrical to the perpendicular, the transitions may or may not be rounded and the strip may or may not be made from metal.

The phrase “with respect to the perpendicular to the longitudinal axis” in claims 8, 10, 13 and 14 is unclear, which render the claims vague and indefinite. It is unclear from the claim language if the items are perpendicular to the axis, or if they based off the perpendicular of the axis.

The phrase “0,5 mm” in claim 9 is unclear, which render the claims vague and indefinite. It is unclear from the claim language what is “0,5 mm”. For the purpose of examination, the examiner assumes this to be 0.5 mm.

The word “section” in claims 11, 12, 13, 14 and 15 is unclear, which render the claims vague and indefinite. It is unclear from the claim language if the word “section” refers to a certain location within the recess or if one section is different from the other sections somehow.

The phrase “parallel to the perpendicular to the longitudinal axis” in claim 13 is unclear, which render the claims vague and indefinite. It is unclear from the claim language what is parallel to what.

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The phrase “5,4 mm” in claim 17 is unclear, which render the claims vague and indefinite. It is unclear from the claim language what is “5,4 mm”. For the purpose of examination, the examiner assumes this to be 5.4 mm.

The phrase “strip is respectively bent with respect to the longitudinal axis” in claim 20 is unclear, which render the claims vague and indefinite. It is unclear from the claim language how the strip is bent.

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by “such as” and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 3 recites the broad recitation of an angle with a range between 10° and 80°, and the claim also recites the ranges 30° to 70°, 50° to 65° and 60°, which are narrower statements of the range/limitation.

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In the present instance, claim 8 recites the broad recitation of an angle with a range between 2° and 30°, and the claim also recites the ranges 3° to 15°, 4° to 10° and 6°, which are narrower statements of the range/limitation.

In the present instance, claim 9 recites the broad recitation of a radius of 0.2 to 1.5 mm, and the claim also recites the ranges 0.4 to 1 mm and 0.5 mm, which are narrower statements of the range/limitation.

In the present instance, claim 12 recites the broad recitation of an angle with a range between 10° and 80°, and the claim also recites the ranges 30° to 70°, 50° to 65° and 60°, which are narrower statements of the range/limitation.

In the present instance, claim 14 recites the broad recitation of an angle with a range between 2° and 30°, and the claim also recites the ranges 3° to 15°, 4° to 10° and 6°, which are narrower statements of the range/limitation.

In the present instance, claim 15 recites the broad recitation of a radius of 0.5 to 5 mm, and the claim also recites the ranges 1 to 3 mm and 2 mm, which are narrower statements of the range/limitation.



In the present instance, claim 18 recites the broad recitation of a radius of 0.1 to 25 mm, and the claim also recites the ranges 0.2 to 1 mm and 0.5 to 0.6 mm, which are narrower statements of the range/limitation.

In the present instance, claim 19 recites the broad recitation of the strip consisting of metal, and the claim also recites steel and aluminum, which are narrower statements of the range/limitation.

7. Regarding claim 13, the phrase "strip-like" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

8. Claim 5 recites the limitation "cut-out" in claims 1 to 4. There is insufficient antecedent basis for this limitation in the claim. There was no previous mention of a cut-out in the claims.

9. Claim 6 recites the limitation "parallel walls" in claims 1 to 5. There is insufficient antecedent basis for this limitation in the claim. There was no previous mention of walls in the claims.

10. Claim 8 recites the limitation "aperture angle" in claims 1 to 7. There is insufficient antecedent basis for this limitation in the claim. There was no previous mention of aperture angles in the claims.

Clarification/correction is required.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

12. Claims 1 – 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Strutz et al. (USPN 6,306,522).

Strutz et al. discloses a metallic lamella strip (Column 6, line 35) made from steel or aluminum (Column 4, lines 1 – 2) with a thickness of 0.3 mm to 0.5 mm (Column 3, lines 63 – 67) that is coated with a plastic or elastomer (Column 2, line 65 to Column 3, line 4). The strip contains opposing extensions, lamella legs, on the side of the strip with the same shape and orientation that are mirror-inverted (Figure 1, #3), and oblong stamp marks, recesses, on the surface (Column 2, line 45). A bridge, connecting element, is formed between adjacent lamellae (Column 5, lines 57 – 60 and Figure 1, #4). The strip may be stretched, expanded, in the longitudinal direction (Figures 1 and 2 and Column 5, lines 39 – 44), and formed into a U or V shape that would inherently have a angle of 10 to 80° (Column 6, lines 36 – 37). The cutouts

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along the edge of strip have a V-shape and appear to have a width of 1/10 to 1/20 of gap and angle of 2 to 30° (Figure 2, #1).

Regarding "extrusion-coated" in claim 21; the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation of extrusion coating is a method of production and therefore does not determine the patentability of the product itself. Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,302,466 to Davis et al., U.S. Patent No. 5,651,218 to Bright et al., U.S.

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Patent No. 4,749,203 to Bright, U.S. Patent No. 4,206,536 to Hammond et al. and U.S. Patent No. 4,367,973 to Gilb et al. are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00 -4:30 p.m. & alternate Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln  
September 16, 2002

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772* *9/21/02*